No. 9(1)82-6Lab./8490.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Sharad International 16-DLF, Industrial Area, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 42/1980

Between

WORKMEN AND THE MANAMEMENT OF M/S. SHARAD INTERNATIONAL 16, D.L.F. INDUSTRIAL AREA, FARIDABAD

Present:—Shri S. S. Gupta, for the workmen.

Shri O. P. Tyagi, for the management.

AWARD

The State Government of Haryana referred the following dispute between the mangement of M/s. Sharad International 16, D.L.F. Industrial Area, Faridabad, and its workmen, by order No. ID/FD/63-80/34379, dated 30th June, 1980, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the closures of the factory with effect from 2nd August, 1980 is justified and in order ? If not, to what relief the workmen are entitled to?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my order, dated 11th December, 1980:—

(1) Whether the claim statement is not signed and verified priperly ? If so, to, what effect ?

(2) Whether the present dispute is not an industrial dispute as averred in the preliminary objections?

(3) Whether the closure of the factory with effect from 2nd March, 1980 is justified and in order ? If not, to what relief the workmen are entitled to?

Issue No. 1 and 2 were tried as preliminary issues and the same were disposed of by order, dated 3rd February, 1982. The management made an application dated 2nd April, 1982 in which it was contended that issue No. 2 was framed on prelimioary objection take in the written statement. Objection No. 5 was that the present reference about closure of the factory would fall outside the purview of the Industrial Disputes Act and for this reasons, present reference was not legally maintainable. Objection No. 6 was preliminary objection in view of the preliminary objection No. 5 The Honb'le Tribunal has no jurisidiction to deal with the industrial dispute.

While deciding issue No. 1 had not touched this respect of the objection, therefore, it was decided to hear the arguments of the parties on this aspect of the case in hand. The learned representative for the management argued that the present term of reference, where the closure of the factory with effect from 2nd March, 1980 is justified and in order, was outside the purview of jurisdiction of this court. He conteded that there can be on prohibition of closure of business because it violated the freedom of business enjoined upon the citizen by the constitution of India. He further contended that the whole cheme of the Industrial Disputes Act. was about a running industry and the closure of business was out side the purview of the Industrial Disputes Act. He cited 1957—I-LLJ, page 235, 1978-II-LLJ-page 110, 1967 I-LLJ-page 423, 1960-II-LLJ, page 1 and 1979--Supreme Court cases (L & S) page 340. The learned representative for the workman argued that the real dispute was that the management had shifted its business to Delhi because the union of workmen had submitted a demand notice. It is not a bonofied clo ure of the business.

I have gone through the pleadings and find that according to the demand notice and claim statement, the management shifted its entire machinaries from Faridabad to Delhi on 2nd March, 1980. While it was denied in the written statement that it was a shifting of concern to Delhi and it was asserted that the management had no concern with the firm of Delhi named in the claim statement rather it was given that the factory named "Shard International, Faridabad" had been closed down. Shri Madan Mohan, General Secretary of the Union who appeared as WW-1, admitted in his statement that the factory was still closed. It was a common case of the parties that the factory was not running and had been closed and machinery etc. also removed.

In 1960-II-LLJ, page-1, it was held "but Section 25-FFF (1) imposes neither a prohibition or a command Under S. 25-F, there is distinct prohibition against an employer against retrenching employees without fulfilling certain conditions. Similar prohibitions are found in Sections 22 and 23 of the Act. In this prohibition is infringed evidently, criminal liability may arise. But there being no prohibition against closure of business without payment of compensation. S. 31 (2) does not apply. By S. 33(c), liability to pay compensation may be enforced by coercive process, but that again does not amount to infringement of Art. 20(1) of the Constitution. Undoubtedly for failure to discharge liability to pay compensation, a person may be imprisoned, under the statute providing for recovery of the amount e.g., the Bombay Land Revenue Code, but failure to discharge a civil liability is not unless the statute expressly so provides, an offence. The protection of Art. 20(1) avails only against punishment for an act which is treated as an offence which when done was not an offence".

In 1957-I-LLJ, page 235, the scope of Section 2(K) vis a vis, closure of business was decided by the Hon'ble Supreme Court and it was held "It cannot be doubted that the entire scheme of the Act assumes that there is in existence an industry, and then proceeds on to provide for various steps being taken, when a dispute arises in that industry. Thus, provisions of the Act relating to lockout, strike, lay-off, retrenchment, conciliation and adjudication proceedings, the period during which the awards are to be in force have meaning only if they refer to an industry which is running and not one which is closed."

In Burn and Co., Ltd., Calcutta V. their workmen (C.A. No. 325 of 1955,—*vide* p. 226 ante) this Court observed that the object of all labour legislation was firstly to ensure fair terms to the workmen, and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer. Both these objects again can have their fulfilment only in an existing and not a dead industry. The view therefore expressed in Indian Metal and Metallurgical Corporation *V.* Industrial Tribunal Madras (Supra) and K.N. Padmanabha Ayyar. *V.* State of Madras ((Supra) that the industrial dispute to which the provisions of the Act supply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and bonafide, any dispute arising with reference thereto would, as held in K.M. Padmanabha Ayyar, *Versus* State of Madras (Supra), fall outside the purview of the Industrial Disputes Act. And that will a fortior be so, if a dispute arises—if one such can be conceived after the closure of the business between the quondam employer and employees."

In 1979-Supreme Cour Cases (L & S) page 340, the Hon'ble Supreme Court held as under:—

"Having heard a closely thought out argument made by Mr. Gupta on behalf of the *appellant*, we are of the opinion that the High Court is right in fits view on the first question. The very terms of the reference show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and, justification of the respondent's decision to close down the business. That is why the reference were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management and further held as under:—

We are, therefore, of the view that the High Court was right of coming to the conclusion that the two Tribunals had no jursidiction to go behind the reference and inquire into the question whether the closure of business, which was in fact effected, was decided upon for reasons which were proper andjustifiable. The propriety of or justification for the closure of a business, in fact and truly effected, cannot raise an industrial dispute as contemplated by the State and Central Acts."

I have given a thoughtful consideration to the matter and find that in the Industrial Disputes, Act, there was a prohibition of strikes and lock-out under chapter V of the Industrial Disputes Act but there was no prohibition on closure of business. This matter was dealt under chapter 5-A of the Act which provides procedure for lay off and retrenchment and entitlment of workman to compensation in the case of transfer and closing down of undertaking. Present reference was not about shifting of the undertaking from one p,ace to an other place but was about justification of the closure of the factory. The scope of reference was limited and the Tribunal was not free to enlarge the scope of dispute referred to it. It cannot widen the scope of inquiry beyond the terms of reference as held by the Supreme Court in 1967-I-LLJ-page-423. On the basis of my above discussion and the laydown in the above cited ruling, I find that the present dispute did not form an industrial dispute as laid down under Section 2(k) of the Industrial Disputes Act, therefore, the reference fails on this ground.

Under present reference, the workman were not entitled to any relief.

Dated the 31st July, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 881, dated 11th August, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Otficer,
Industrial Tribunal, Haryana,
Faridabad.